No. 313

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

GEORGE W. GREEN, ET AL.,

Petitioners,

vs.

CITY OF STUART, FLORIDA,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO THE WRIT OF CERTIORARI

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I.

The Petitioners, in the "Statement of Matters Involved" have so distorted the facts as shown by the Record, have so intermingled argument with facts, and have made so many gratuitous statements of facts which do not appear of record, the Respondent therefore assumes the privilege of restating the case for the benefit of the Court.

STATEMENT OF THE CASE

(The attention of the Court is called to the fact that everyone of the various petitioners before this Court were represented by one Attorney throughout the proceeding in the lower Court; to-wit, one Carroll Dunscombe).

JUNE 18, 1942. The City of Stuart, Florida, being in default of more than $600,000.00 in its bonded indebtedness of over $1,000,000., filed a petition under the provisions of Chapter IX of the Bankruptcy Act (11 U.S.C. 401-403) for approval of a Plan of Composition of its bonded indebtedness (R. 9-76). The petition (R. 9), the Plan (R. 13) and related papers (R. 24-25) specifically set forth in no uncertain terms the name, the description, the date of issue, and all other related facts, showing the various issues of bonds to be affected by the Plan of Composition. This Plan provided, in substance, (R. 13-23) that the holders of original six per cent bonds exchange them for refunding bonds maturing in thirty years, and bearing interest at greatly reduced rates, beginning at one per cent per annum. The Plan affected nothing but the bonded indebtedness of the City, and the indebtedness evidenced by a judgment rendered in 1929 for breach of contract in the sum of approximately $13,000.00. (See *Stuart v. American Surety Co.*, 38 F (2) 193). This judgment bore interest at six per cent per annum and was immediately due and payable. The holder thereof requested the City that it be allowed to receive refunding bonds at the lower rate of interest in lieu thereof, and to this of course the City naturally acceded. None of the outstanding operating expenses of the City, none of its open accounts, and no other indebtedness of the City was affected by the Plan of Composition.

The Court, on June 18, 1942, approved the petition as properly filed, prescribed the form of notice to be given to the creditors, and set a date for a hearing on the Plan for October 5, 1942, in Miami (R. 76-80). On June 23, 1942, before any notices were given to any creditors (R. 81-82), the Court, by a nunc pro tunc order, changed that part of its order of June 18, 1942, so that the hearing was set for September 14, 1942, instead of October 5, 1942. The notices going to

creditors, pursuant to the order of the Court, all gave the date of September 14, 1942, as the date of the hearing (R. 213, 204, 83).

After the filing of the Plan, and on June 25, 1942, the City, in accordance with the provisions of the Act (11 U.S.C. 403(c)) gave notice of application for Interlocutory or Temporary Injunction to enjoin various creditors from bringing actions against the City pending the determination of the matter, and the date of July 18, 1942, was set for a hearing on this injunction. Among the suits listed (R. 206-208) was that of Pauline A. Selser, et al. vs. City of Stuart. On July 2, 1942, (R. 200) after receiving notice, Pauline A. Selser filed an answer to the application for injunction as to her claim, alleging that her cause of action should not be stayed. At the same time (R. 201-203), she petitioned the court to stay the action then pending in the State Court to validate the bonds to be issued under the refunding program and to stay the bankruptcy proceedings until her action in the Federal Court to determine whether certain lands should be excluded from the city limits under the Declaratory Judgment Act could be determined (R. 202-203). The matter came on for hearing on the application for the injunction on July 18, 1942, and the Court restrained all other actions pending the determination of the matter except that of Pauline A. Selser, she being allowed to continue her action in the Federal Court under the Declaratory Judgment Act. To the application of Pauline A. Selser to stay the bond validation proceeding in the State Court, and to stay the bankruptcy proceeding, the Court on July 20, 1942, (R. 139) entered an order of denial thereof.

JULY 7, 1942. One George W. Green filed a proof of claim (R. 83-86) on three alleged promissory notes, each in the sum of $5,000.00, with interest thereon at eight per cent per annum, and with a balance due thereon of $29,168.06.

Copies of the notes were not attached to the proof of claim. These alleged notes, even if valid claims against the City, were in no manner affected by the Plan.

JULY 13, 1942. George W. Green filed an answer to the Plan of Composition, objecting to it (R. 92-108). Along with the answer, Green filed interrogatories to the Mayor of the City (R. 86-91).

JULY 18, 1942. Pauline A. Selser again filed a motion to stay the suit in the State Court to validate the refunding bonds which would be issued under the Plan of Composition on various grounds (R. 108-110), the substance of which was that the Court should determine first in the suit which she then had in the Federal Court the taxability of certain lands in the City before the bonds should be validated. She did not show herself in the motion to either be a bondholder or a taxpayer (R. 108-110).

JULY 18, 1942. Newport Culvert Company, on behalf of St. Lucie Estates Trust, filed a claim in the sum of $17,212.46, with interest thereon at eight per cent since December 8, 1938 (R. 110-113). The claim was not based on any securities affected by the Plan of Composition, but apparently was based upon some claim for a deficiency decree in a mortgage foreclosure, which had nothing whatsoever to do with the Plan of Composition, and was not in any manner affected by it.

JULY 25, 1942. Interrogatories were filed by Newport Culvert Company to Thomas M. Cook & Company (R. 139-142).

AUGUST 18, 1942. Newport Culvert Company filed an answer objecting to the Plan of Composition (R. 127-138).

AUGUST 19, 1942. One Robert E. Turner, a citizen and

resident of Atlanta, Georgia, claiming to be the owner of certain property in the Town, asked leave to intervene in the case (R. 134-137), and moved the Court to stay the case until the case of Pauline A. Selser could be determined, and also that the case be stayed until the taxability of certain lands in the City should be determined.

SEPTEMBER 3, 1942. The City on September 3, 1942, (R. 144-148) served a motion on George W. Green, Newport Culvert Company, on behalf of St. Lucie Estates, and Robert E. Turner to strike the claims of George W. Green and Newport Culvert Company, on behalf of St. Lucie Estates, and the answers predicated thereon because (a) the claims were not in any manner being adjudicated in the bankruptcy proceeding; (b) the claims were not based on any bonds or coupons involved in the bankruptcy proceeding and were entirely foreign thereto; and (c) the Plan of Composition made no provision for the payment or disposition of the purported claims of the aforesaid creditors; that the answers were predicated upon claims which were not involved in the proceeding, and therefore such creditors were entirely foreigners to the proceeding.

The motion to strike the answer of Robert E. Turner (R. 148) was based on the contention that (a) Robert E. Turner did not own any bonds or coupons involved in the proceeding and therefore was an entire foreigner thereto; (b) that there is no authority in law for a taxpayer to intervene or be heard in the bankruptcy proceeding; (c) that if Robert E. Turner is a taxpayer he is represented in the proceedings by the City of Stuart, and therefore the matters raised by him were entirely collateral to the proceedings; (d) that the Municipal Bankruptcy Act makes no provision for determining whether or not lands or properties are liable for taxation for

the securities to be issued under the Plan, but its sole authority is to confirm or reject the Plan.

SEPTEMBER 14, 1942. The matter came on for hearing on Sept. 14, 1942 (the date set for a hearing on the Plan) before the Honorable William J. Barker, Judge of the United States District Court, in Miami, and the Court made the following order (R. 155-156):

> "This proceeding came on to be heard in Miami, Florida, on the 14th day of September, A. D. 1942, at 9:30 o'clock A.M., in accordance with notice to creditors heretofore given in said cause. After full consideration, the Court finds and determines that it has jurisdiction of the subject matter of this proceeding and of the petitioner and of all creditors of the petitioner, and that all creditors of the petitioner were duly, regularly and lawfully notified of the time, place and purpose of the hearing in the manner directed in the order entered herein on June 18, 1942.
>
> "1. At the time and place aforesaid it appeared that a proof of claim and answer were filed in this proceeding by one Newport Culvert Company, to which the petitioner has moved to strike; that one George W. Green has filed a proof of claim in this cause, and an answer based thereon, to which the petitioner has filed a motion to strike, *and it appearing to the Court that the proofs of claim of the aforesaid George W. Green and the Newport Culvert Company, and the answers based on such proofs of claim aforesaid, are not materially affected by this Plan of Composition, and that such claims are not in any manner affected, and therefore the answers based thereon are irrelevant and immaterial to this proceeding and are hereby stricken from this cause.*"

As to the intervention of Robert E. Turner, a taxpayer, the Court made the following ruling (R. 156):

"2. It further appears that one Robert E. Turner, who showed himself to be a taxpayer in the City of Stuart, has asked permission to intervene in the cause and has filed an answer herein, contending that his property is not properly taxable for the refunding bonds to be issued hereunder, and it appearing to the Court that the aforesaid Robert E. Turner has no authority in law to intervene in this cause, and therefore the motion of Robert E. Turner for leave to intervene is denied."

At this hearing (had on the date previously set by the Court), no creditor having appeared but these various objectors, the Court allowed the City to make its prima facie by affidavits. These affidavits were produced and the Court actually manually signed the decree in Tampa three days later, although the matter was adjudicated in Miami September 14, 1942.

OCTOBER 9, 1942. Long after the entry of the interlocutory decree, Pauline A. Selser, Mary M. Gosling, and George Van Slyck (this being the third application of Pauline A. Selser before the Court), petitioned the Court to allow them to intervene in this case (R. 216-217) and to stay the bankruptcy proceedings pending the determination of a certain appeal then pending in the Circuit Court of Appeals for the Fifth Circuit (apparently case No. 10464) *Selser et al. vs. City of Stuart*, 135 F. (2), 211. Pauline Selser had lost her suit in the lower Court and was now contending that the bankruptcy proceedings should be stayed until her action in this case could be reviewed by the Circuit Court of Appeals.

Likewise, on this same date one A. T. Van Tassel moved the Court to allow him to intervene in the proceedings.

OCTOBER 15, 1942. George W. Green and Newport Culvert Company moved the Court to set aside the order of September 18, 1942, striking their answers and claims.

Robert E. Turner also asked that he be allowed to intervene (R. 178-183). (This in spite of the fact that the Court had previously denied the intervention of Turner (R. 156).

On the same date George W. Green again moved the Court to strike the validation decree entered in the State Court (R. 184), and Green and Newport Culvert Company moved that the various interrogatories (R. 184-185) be answered by the parties on whom they had been served.

OCTOBER 16, 1942. The various motions of Green, Turner, Van Tassel, Newport Culvert Company, Pauline A. Selser, Mary M. Gosling and George Van Slyck were considered by Judge John W. Holland, who entered an order denying all of the various motions of the parties (R. 186-188). The Court again specifically determined:

> " * * it appearing to the Court that such persons are not in any manner affected by this Plan of Composition, and that such persons do not own securities affected by this Plan of Composition and therefore are strangers to this proceeding and have no right to be heard herein, and that some of such persons are taxpayers and therefore have no right to intervene in this cause; and it further appearing to the Court that due and regular notice was given in accordance with the Bankruptcy Act for a hearing on the petition on September 14, 1942, and that all of such persons had ample opportunity to be heard, and that an interlocutory decree has been duly and regularly entered in this cause, and that more than ten days from the entry thereof has expired, * * "

On this same date a final decree was entered (R. 188-191) finally confirming the Plan of Composition. This final decree specifically referred to the various issues of bonds being affected by the proceedings, and made no reference whatsoever to the various claims of the taxpayers and creditors not affected by it.

It designates the various issues of original bonds being affected, cancels them in effect, and holds the City obligated upon the bonds to be issued in lieu thereof (R. 189-190). To this date every known bondholder has exchanged his securities for the refunding bonds.

OCTOBER 19, 1942. George W. Green, Robert E. Turner and Newport Culvert Company filed notice of appeal from the order of September 18, 1942, striking their answers and claims, and also from the order of October 16, 1942, refusing to set aside the order and to reinstate their claims and answers, and also appealed from the final decree of October 16, 1942; Van Tassel, Pauline A. Selser, Mary M. Gosling and George Van Slyck "appealed from the order of October 16, 1942, refusing to permit them to be heard, and the final decree *eneterd* on October 10th, 1942." The decree was actually entered on October 16, 1942.

The Circuit Court of Appeals in the case of *Green vs. Stuart,* 135 F. (2), 33, affirmed the various orders of the lower Court.

II.

ARGUMENT

Point One

The Petitioners, Green and Newport Culvert Company, are not affected by the Plan of Composition, and therefore are strangers to this proceeding.

The Plan of Composition was filed strictly in accordance with 11 U.S.C. 403 (a), which provides that:

> "The 'Plan of Composition', within the meaning of this Chapter, may include provisions modifying or altering the rights of creditors generally, or any class of them, secured or unsecured, either through issuance of new securities of any character, or otherwise, and may contain such other provisions and agreements not inconsistent with this chapter as the parties may desire."

It is clearly apparent from the Plan (R. 14) that it affected only the bonded indebtedness of the City specifically described therein, and one judgment owned by the American Surety Company recovered against the City years ago. See *Stuart vs. American Surety Company*, 38 F. (2) 193. As a matter of fact the holders of this judgment had specifically requested that they take the bonds, which would greatly reduce the annual interest on the judgment and would spread its payment over a period of thirty years. Under the Plan, the holders of the old bonds and the holders of this judgment were to exchange them for new refunding bonds maturing in thirty years and bearing interest at a low rate of interest, beginning with a rate of one per cent per annum. At the time of the Plan, the City was in default on this indebtedness of over half million dollars. No other indebtedness of the City, including past due open accounts, operating expenses, or any other accounts and expenses were affected thereby. Creditors holding such other accounts now stand in the same position that they stood in before any Plan was filed; and Green and Newport Culvert Company, quite obviously, have every right at this moment that they had prior to the time that the bondholders exchanged their old past-due indebtedness for new refunding bonds.

If there was any possible doubt as to whether or not Green and Newport Culvert Company were affected by the Plan, that matter was firmly put to rest by an order of the Court in the

Interlocutory Decree when it struck from the files their claims and adjudicated (R. 156):

> "I. At the time and place aforesaid it appeared that a proof of claim and answer were filed in this proceeding by one Newport Culvert Company, to which the petitioner has moved to strike; that one George W. Green has filed a proof of claim in this cause, and an answer based thereon, to which the petitioner has filed a motion to strike, and it appearing to the Court that the proofs of claim of the aforesaid George W. Green and the Newport Culvert Company, and the answers based on such proofs of claim aforesaid, are not materially affected by this Plan of Composition, and that such claims are not in any manner affected, and therefore the answers based thereon are irrelevant and immaterial to this proceeding and are hereby stricken from this cause."

Not being satisfied with this order, the Appellants, Green and Newport Culvert Company (R. 178) moved to vacate it and to reinstate their claims. This motion came before another District Judge, who also denied the motions and again ruled that the Appellants, Green and Newport Culvert Company, were not affected by the Plan (R. 186):

> "* * it appearing to the Court that such persons are not in any manner affected by this Plan of Composition, and that such persons do not own securities affected by this Plan of Composition and therefore are strangers to this proceeding and have no right to be heard herein, and that some of such persons are taxpayers and therefore have no right to intervene in this cause; and it further appearing to the Court that due and regular notice was given in accordance with the Bankruptcy Act for a hearing on the petition on September 14, 1942, and that all of such persons had ample opportunity to be heard, and that an interlocutory decree has been duly and regularly entered in this cause, and that more than ten days from the entry thereof has expired, * *."

Both of these orders specifically followed the provisions of the Bankruptcy Act (11 U.S.C. 403 (a)), which provide that:

> "No creditor shall be deemed to be affected by any plan of composition unless the same shall affect his interest materially, and in case any controversy shall arise as to whether any creditor or class of creditors shall or shall not be affected, the issue shall be determined by the judge, after hearing, upon notice to the parties interested."

The alleged claim of George W. Green was not based upon any bonds or coupons affected by the Plan of Composition but was based upon three alleged Promissory Notes dated May 19, 1926 (R. 83-85), all of which the City has consistently, and does now consistently, deny liability thereon. A complete history of Mr. Green's various law suits against the City in attempting to secure a judgment on these notes will be found in the cases of *Green vs. Stuart*, 81 F. (2) 968, Cert. Den. 82 L. Ed. 575; *Stuart vs. Green*, 91 F. (2) 603, Cert. Den. 83 L. Ed. 1510; *Stuart vs. Green*, 94 F. (2) 942; *Green vs. Stuart*, 101 F. (2) 309. In the first case, *Green vs. Stuart*, 81 F. (2) 968, the lower court directed a verdict in favor of the City on the notes and on appeal the Circuit Court of Appeals reversed the case and remanded it for further proceeding. Thereupon jurisdiction of the Court was assailed and the lower court then dismissed the action for lack of jurisdiction. This action was affirmed by the Circuit Court of Appeals. *Stuart vs. Green*, 91 F. (2) 603. The other cases involve matters not going to the merits of the cause. The City has consistently denied liability on the notes and Green has never brought another action in an attempt to adjudicate his alleged claim. Thus it is that his claim is on some disputed matter, not bonds or coupons, affected by the Plan which would entail several years of litigation before a final result would be obtained.

The claim of the Newport Culvert Company, on behalf of St. Lucie Estates (R. 110-113) was not based on any bonded indebtedness affected by the Plan, but is based upon some claim that the City purchased certain property subject to a deed of trust and thereby assumed to pay certain Notes which were secured by a mortgage on the property. Again we have some sort of nebulous law suit which the Claimant is attempting to convert into bonded indebtedness. Without burdening the Court with any citations of authorities in Florida, such claim itself, even if affected by the Plan, is not a valid claim against the City. Be that as it may, the City has and does consistently deny liability on the claim, but does not contend that it was affected by this Plan of Composition, and if the Newport Culvert Company has any claim against the City it has a right to reduce the same to judgment by action in the proper court.

Apparently the Petitioners, Green and Newport Culvert Company, believe that under the decision of the case of *Poinsett Lumber Company vs. Drainage District No. 7* (C.C.A. 8) 119 F. (2) 270 (1941) *all of the indebtedness* of the City regardless of whether liquidated or unliquidated, or whether set forth in the Plan, became affected by the Plan and therefore that provision should have been made in the Plan for Green and Newport Culvert Company to litigate in the bankruptcy proceedings their alleged claims against the City. Quite obviously the effect of this contention would have meant that bondholders of the City who were willing to swap original 6% bonds for 1% refunding bonds, would have been held in abeyance for several years until lengthy litigation could have been concluded to determine whether or not Green and Newport Culvert Company had some kind of claim against the City. Then all bondholders would have been faced with the proposition of whether or not under the laws of the State of Florida refunding bonds could have even been issued in

exchange for this type of indebtedness. In any event, the bankruptcy proceeding has strengthened the security of any claim that these creditors may have against the City.

The Poinsett case, supra, decided only that the bankruptcy court did not abuse its discretion in refusing to allow a creditor to bring action in a State Court on an unliquidated claim for damages because of being flooded by overflow water in the construction of the District. In order to be sure about this point we secured the original record in that case, and submitted it to the Circuit Court of Appeals when this case was argued, and it definitely appears (aside from our contention that the case turned on whether or not the Court abused its discretion in refusing to allow plaintiff therein to bring action against the District), that *all of the indebtedness of the District, whether liquidated or unliquidated, and particularly any claims against the District because of overflow were incorporated in the Plan.* The original record in that case, on page 107 therein, specifically provided that:

> "The district proposes to readjust and refinance *all its present outstanding indebtedness, including such as may be established in any bankruptcy or debt composition proceedings hereunder (excepting the debts not affected by the plan, as described in the last preceding paragraph hereof)*, by paying the creditors or holders of such debts the (fol. 181) sum of 25.879 cents *falt* for each dollar of the principal amount of their respective claims, exclusive of interest; that all such payments will be made from the proceeds of a loan authorized by Reconstruction Finance Corportion, an agency of the United States Government, which proceeds have been or will be disbursed to or for the benefit of said drainage district for said purpose." (Emphasis supplied.)

It thus appears that the Plan made specific provision for the composition of the unliquidated claim attempted to be asserted

by the Poinsett Lumber Co. The history of that case may be found in the case of *In Re Drainage District No. 7*, (D. C. Ark.) 25 Fed. Supp. 370, and *Luhrman vs. Drainage District No. 7*, 104 F. (2) 696, Cert. Den. 308 U. S. 604, 60 Sup. Ct. 141, 84 L. Ed. 530. It is interesting also to note that the Court in the Poinsett case, 119 F. (2) 270, at page 274, pointed out that the Lumber Company was a creditor "with a claim subject to adjustment in the bankruptcy proceeding."

The Court in the instant case, on two occasions, has ruled that the Petitioners, Green and Newport Culvert Company, are not affected by the Plan, and it is indeed hard to understand why they are now before this Court attempting to become involved in some matter which is entirely foreign to them. They have every right they ever had before the case was filed, and they have not been affected in any manner whatsoever, therefore they cannot now complain of action in the lower court in the bankruptcy proceedings.

Philadelphia W. & B. R. Co. vs. Howard, 13 How. 307, 14 L. Ed. 157,

Case vs. Kelley, 133 U. S. 21, 10 S. Ct. Rep. 216, 33 L. Ed. 513,

Livingston vs. Moore, 7 Pet. 469, 8 L. Ed. 751,

Campbell vs. Pratt, 2 Pet. 354, 7 L. Ed. 385,

United States vs. Burdett, 9 Pet. 682, 9 L. Ed. 273,

Johnson vs. Jones, 1 Black 209, 17 L. Ed. 117,

Kennedy vs. Cresswell, 101 U. S. 641, 25 L. Ed. ——,

Thompson vs. Roberts, 24 How. 233, 16 L. Ed. 648,

Close vs. Glennwood Cemetery, 107 U. S. 466, 2 S. Ct. Rep. 267, 27 L. Ed. 408.

If Green and Newport Culvert Company have valid claims against the City, they still have recourse in the proper court to have such claims adjudicated, and quite obviously by virtue of all the bonded indebtedness of the City being placed on a firm basis, the City will be in a much better position to pay these alleged creditors whatever is owing to them, if anything. The City, at the time of filing of the Plan, had many open accounts outstanding in the same position as these, but none of these other persons have made any objection to this proceeding. Also, it is quite obvious that if Green's claim should have been incorporated in the Plan, this matter would have been delayed for several years pending strenuous litigation throughout the various courts until that matter could be determined, because the City contends that it owes Green nothing. If anything, the refunding has been a benefit to Green if he has a valid claim against the City.

Point Two

There was no error on the part of the lower court in (a) Striking the claim of Robert E. Turner, a taxpayer; and (b) Denying the petitions of Van Tassel, Selser, Gosling and Van Slyck to intervene in the proceedings.

Robert E. Turner, a taxpayer, prior to the time of the hearing on the Plan, filed a petition to intervene and filed an answer, in which he contended that his property was not properly taxable for the refunding bonds to be issued under the Plan. The Court (R. 156) struck his answer. After that Pauline A. Selser, Mary Gosling and George Van Slyck again attempted to intervene in the case, and to stay the proceedings pending the determination of an appeal before the Circuit Court of Appeals for the Fifth Circuit in the case of *Selser*, et al. vs. Stuart, apparently case No. 10464, *(Selser vs. Stuart*, 135 F. (2) 211), in which a declaratory judgment was sought as to the taxability of their lands for the bonds. The Court

again denied the rights of these persons to intervene in the case (R. 186), pointing out they were in no manner affected by the Plan, and therefore they have no right to intervene in the case.

These alleged taxpayers now have every right they ever had before any bondholders, holding the bonded indebtedness of the City, exchanged them for new bonds under the Plan. As a matter of fact, the bankruptcy court cannot go into these collateral matters of the taxability of the lands of various taxpayers, as the Circuit Court of Appeals for the Fifth Circuit pointed out in the cases of *Leco Properties, Inc. vs. R. E. Crummer & Company,* (C.C.A. 5) 128 F. (2) 110, and in *Ware vs. R. E. Crummer & Company,* (C.C.A. 5) 128 F. (2) 114. See also *In Re Willacy County Water Control & Improvement District,* 36 Fed. Supp. 36, at page 39. Judge Hutcheson, in the Leco Properties case, particularly pointed out that the jurisdiction of the bankruptcy court "is strictly limited to approving or disapproving, and carrying out the Plan of Composition." That was all that was done in the instant case. The Court merely determined that it was fair for all of the holders of the bonded indebtedness of the City to exchange them for new refunding bonds, and it is interesting to note that as of this date every known bond has been exchanged, without a single objection on the part of any bondholder affected by the Plan.

The disposition, in the Willacy County Water Control & Improvement District case, supra, made by the District Judge on petition to intervene by various taxpayers is squarely on point with the contention of the City here. In that case the taxpayers attempted to intervene and have the bankruptcy court determine the taxability of their lands for the bonds being issued pursuant thereto. The Court in that case said: